

February 11, 2015

The Honorable Juergen A. Waldick
Allen County Prosecuting Attorney
204 N. Main St. Suite 302
Lima, Ohio 45801

SYLLABUS:

2015-005

1. A political subdivision that acquires forfeited property pursuant to R.C. 5723.01(A)(3) takes “all the right, title, claim, and interest of the former owner,” and if the former owner’s title to the property includes any liens and encumbrances, the political subdivision takes title to the property subject to those liens and encumbrances. (2013 Op. Att’y Gen. No. 2013-001, syllabus, paragraphs 3, 4, and 5, overruled, and syllabus, paragraph 6, clarified).
2. The term, “political subdivision,” as used in R.C. 5723.01(A)(3), means a municipal corporation, a county, or a township.
3. A county treasurer’s obligations under R.C. 5723.11 to dispose of excess proceeds from a sale of forfeited property “according to law,” require the treasurer, pursuant to R.C. 9.39, to retain the excess proceeds in the county treasury for the lawful owner for an additional five years. If the excess proceeds remain unclaimed after this five-year period, the treasurer shall deposit the excess proceeds into the county general fund.



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OPINION NO. 2015-005

The Honorable Juergen A. Waldick
Allen County Prosecuting Attorney
204 N. Main St. Suite 302
Lima, Ohio 45801

Dear Prosecutor Waldick:

We have received your request for an opinion regarding forfeited property. Your letter poses three questions. First, you ask how a county that does not have a county land reutilization corporation (“CLRC”), is to dispose of excess proceeds under R.C. 5723.11. Your second question asks whether a political subdivision that acquires forfeited property under R.C. 5723.01(A)(3)¹ acquires title to the property free and clear of all liens.² Your third question asks about the meaning of “political subdivision” in R.C. 5723.01(A)(3). For ease of analysis, we will address your questions out of order, beginning with your second question.

In examining whether a political subdivision acquires title to forfeited property under R.C. 5723.01(A)(3) free and clear of all liens, it is necessary for us to overrule or clarify several of the conclusions in 2013 Op. Att’y Gen. No. 2013-001. To better understand the reasons behind our departure from 2013 Op. Att’y Gen. No. 2013-001, it is important to begin our analysis with a summary of the statutory framework governing the foreclosure and forfeiture of real property. Because land becomes available in forfeiture under R.C. 5723.01(A) only if it has

¹ When we received your inquiry, a different version of R.C. 5723.01(A)(3) was in effect. *See* Sub. S.B. 353, 127th Gen. A. (2008) (eff. Apr. 7, 2009). The General Assembly recently amended R.C. 5723.01(A)(3) in Am. Sub. S.B. 172, 130th Gen. A. (2014) (eff. Sept. 4, 2014). This opinion analyzes R.C. 5723.01(A)(3) as amended in Am. Sub. S.B. 172.

² “The term ‘lien’ means a charge upon real or personal property for the payment or discharge of a debt or duty.” 1990 Op. Att’y Gen. No. 90-061, at 2-263. Liens attach to real property when various charges remain unpaid. *See, e.g.*, R.C. 343.08(A)(1) (amounts charged by a board of a county or joint solid waste management district “shall be a lien on the property from the date they are placed upon the real property duplicate by the auditor”). The delinquent amounts are certified to the county auditor, or as otherwise provided under the relevant statute.

not been sold “pursuant to foreclosure proceedings under [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.18],” we will begin our analysis with an explanation of the foreclosure procedures set forth in R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18.³ R.C. 5723.01(A)(1).

Foreclosure under R.C. 323.25 and R.C. 5721.18

Under R.C. 319.28, the county auditor is required to compile and certify an annual tax list and duplicate of all the real and public utility property in the county. *See* R.C. 319.28(A). R.C. 323.11 governs the state’s tax lien on such property, providing, in relevant part:

The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually, or as provided in [R.C. 5727.06], and continue until such taxes, including any penalties, interest, or other charges accruing thereon, are paid.

The county treasurer is responsible for collecting the taxes listed on the duplicate and settling with the county auditor for the amount collected. *See* R.C. 321.24(A) (requiring the county treasurer to settle with the auditor on or before the fifteenth of February); R.C. 321.24(C) (mandating that the county treasurer settle with the auditor on or before the tenth day of August for all taxes and assessments “not included in the preceding February settlement”). The settlements between the treasurer and auditor take place twice a year, “on or before the fifteenth of February” and “on or before the tenth day of August.” R.C. 321.24(A), (C).

Immediately following the August settlement, the county auditor compiles, “in substantially the same form as the list and duplicate prepared pursuant to [R.C. 319.28],” a delinquent land list and duplicate that identifies “all delinquent lands⁴ in the auditor’s county.”

³ The Revised Code provides for foreclosure procedures in addition to those codified in R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18. *See, e.g.*, R.C. 5721.14 (governing the foreclosure and forfeiture of delinquent vacant lands in one proceeding); R.C. 5721.17 (governing the foreclosure of property that contains a building that constitutes a nuisance). This opinion focuses only on those types of foreclosure proceedings explicitly noted in R.C. 5723.01(A)(1). Our discussion of foreclosure is intended to summarize several key foreclosure concepts, but is not an exhaustive explanation of every relevant provision. Our primary aim is to demonstrate how these particular foreclosure processes relate to and affect forfeiture proceedings under R.C. Chapter 5723.

⁴ R.C. 5721.01(A)(1) defines “delinquent lands” as “all lands, including lands that are unimproved by any dwelling, upon which delinquent taxes ... remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to [R.C. 321.24(C)].” R.C. 323.01(E) defines “delinquent taxes” as follows:

R.C. 5721.011 (footnote added). At the same time that the delinquent land list and duplicate are compiled, the county auditor also creates a delinquent tax list pursuant to R.C. 5721.03(A). The delinquent tax list identifies delinquent lands “on which taxes have become delinquent at the close of the collection period immediately preceding the making of the delinquent land list” and duplicate. R.C. 5721.03(A). R.C. 5721.03(A) further provides:

The auditor shall also compile a delinquent vacant land tax list of all delinquent vacant lands⁵ prior to the institution of any foreclosure and forfeiture actions against delinquent vacant lands under [R.C. 5721.14] or any foreclosure actions against delinquent vacant lands under [R.C. 5721.18]. (Footnote added.)

Twenty-eight days after publishing a delinquent vacant land tax list under R.C. 5721.03 and one year after certifying the delinquent land list under R.C. 5721.011, the county auditor is required to make a delinquent vacant land tax certificate and delinquent land tax certificate, respectively, for each parcel of real property contained in the delinquent vacant land tax list or delinquent land list upon which the taxes remain unpaid. R.C. 5721.13(A), (B)(1). The county auditor makes each certificate in duplicate and files the originals with the prosecuting attorney. R.C. 5721.13(A), (B)(1). The county auditor may compile “a master list of delinquent tracts and a master list of delinquent vacant tracts” in lieu of creating separate certificates for each parcel of delinquent land. R.C. 5721.13(C).

R.C. 323.25 and R.C. 5721.18 authorize the county treasurer and county prosecuting attorney, respectively, to file foreclosure actions against real property listed on the duplicates, lists, and certificates described above. R.C. 323.25 authorizes the county treasurer to file a foreclosure action against real property “[w]hen taxes charged against an entry on the tax

(1) Any taxes charged against an entry on the general tax list and duplicate of real and public utility property that were charged against an entry on such list and duplicate for a prior tax year and any penalties and interest charged against such taxes.

(2) Any current taxes charged on the general tax list and duplicate of real and public utility property that remain unpaid after the last day prescribed for payment of the second installment of such taxes without penalty, whether or not they have been certified delinquent, and any penalties and interest charged against such taxes.

⁵ “Delinquent vacant lands” are defined by R.C. 5721.01(A)(2) as including “all lands that have been delinquent lands for at least one year and that are unimproved by any dwelling.”

duplicate ... are not paid within sixty days after delivery of the delinquent land duplicate to the county treasurer.”⁶ R.C. 323.25 further states, in part:

[T]he county treasurer shall enforce the lien for the taxes by civil action in the treasurer’s official capacity as treasurer, for the sale of such premises in the same way mortgage liens are enforced or for the transfer of such premises to an electing subdivision pursuant to [R.C. 323.28] or [R.C. 323.78], in the court of common pleas of the county, in a municipal court with jurisdiction, or in the county board of revision with jurisdiction pursuant to [R.C. 323.66].⁷ (Footnote added.)

R.C. 5721.18, on the other hand, authorizes the county prosecuting attorney, “in the name of the county treasurer,” to institute a foreclosure action against property listed on a delinquent land or delinquent vacant land tax certificate or master list of delinquent or delinquent vacant tracts. R.C. 5721.18 provides, in part:

The county prosecuting attorney, upon the delivery to the prosecuting attorney by the county auditor of a delinquent land or delinquent vacant land tax certificate, or of a master list of delinquent or delinquent vacant tracts, shall institute a foreclosure proceeding under this section in the name of the county treasurer to foreclose the lien of the state, in any court with jurisdiction or in the county board of revision with jurisdiction pursuant to [R.C. 323.66].

A foreclosure action shall not be commenced under R.C. 5721.18 if “a foreclosure or foreclosure and forfeiture action has been or will be instituted under [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.14].” R.C. 5721.18.

The disposition procedures for property that has been foreclosed upon under R.C. 323.25 and R.C. 5721.18 are similar. In foreclosure actions filed under R.C. 323.25, the court or county board of revision “shall order such premises to be transferred pursuant to [R.C. 323.28(E)] or shall order such premises to be sold.” R.C. 323.28(A). Likewise, in foreclosure actions filed

⁶ The county treasurer shall not file a foreclosure action under R.C. 323.25 against property that has a pending application for a tax exemption as provided for in R.C. 323.25(A), is subject to a delinquent tax contract under the conditions set forth in R.C. 323.25(B), or has had a tax certificate sold in accordance with R.C. 323.25(C).

⁷ R.C. 323.66 gives a county board of revision jurisdiction to govern the foreclosure of “abandoned land,” and authorizes the board, “[i]n lieu of utilizing the judicial foreclosure proceedings and other procedures and remedies available under [R.C. 323.25-.28] or under [R.C. Chapters 5721-5723],” to foreclose the state’s tax lien upon such land and dispose of the land pursuant to the procedures codified in R.C. 323.65-.79. R.C. 323.66(A); *see also* R.C. 323.65(A) (defining the type of property that constitutes “abandoned land”). The procedures available under R.C. 323.65-.79 are explained more fully below.

under R.C. 5721.18, “[t]he court or the county board of revision shall order such premises to be transferred pursuant to [R.C. 5721.19(I)] or ... sold, without appraisal.” R.C. 5721.19(A).

R.C. 323.28(E) and R.C. 5721.19(I) govern the property’s disposition through transfer.⁸ Under either statute, the court or county board of revision transfers the property to an electing subdivision⁹ on the plaintiff’s motion or on its own motion, when the foreclosure complaint alleges that the property is delinquent vacant land, abandoned land, or nonproductive land,¹⁰ and its fair market value is less than “the value of the taxes, assessments, penalties, interest,” and costs charged against it. The court or board transfers the fee simple title of the land to the electing subdivision under these divisions without an appraisal and without a sale. R.C. 323.28(E); R.C. 5721.19(I).

Foreclosed property that is not transferred under R.C. 323.28(E) or R.C. 5721.19(I) shall be sold at public auction pursuant to R.C. 323.28(A) or R.C. 5721.19(A). When land is sold

⁸ In special circumstances, property being foreclosed under R.C. 323.25 and R.C. 5721.18 (or R.C. 323.65-.79, for that matter) may also be transferred pursuant to R.C. 323.78. R.C. 323.78 permits a county treasurer, “in any petition for foreclosure of abandoned lands under [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.18]” to invoke what the statute refers to as the “alternative redemption period.” R.C. 323.78(A); *see also* R.C. 323.65(J) (defining the alternative redemption period as a special twenty-eight day period in which the abandoned land’s owner of record can redeem the property from foreclosure by paying the delinquent amounts charged against it). “If a county treasurer invokes the alternative redemption period ... and if a municipal corporation, township, county, school district, community development organization, or [CLRC] has requested title to the parcel,” R.C. 323.78 requires the court or board with jurisdiction, upon the property’s foreclosure, to order the property transferred to the requesting entity upon the alternative redemption period’s expiration. A transfer under R.C. 323.78 occurs without an appraisal or sale, and “all impositions and any other liens on the property [are] deemed forever satisfied and discharged.” R.C. 323.78(B).

⁹ An “electing subdivision,” as defined by R.C. 5722.01(A), includes any municipal corporation, county, or township that has enacted or adopted an ordinance or resolution “to facilitate the effective reutilization of nonproductive land situated within its boundaries.” R.C. 5722.02(A). R.C. 5722.02(A) requires that “[t]he ordinance or resolution ... state that the existence of nonproductive land ... is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.” *See also* 1991 Op. Att’y Gen. No. 91-027, at 2-143 to 2-144 (discussing the operation of a land reutilization program governed by R.C. 5722.01-.15).

¹⁰ R.C. 323.65(A) and R.C. 5722.01(F) set forth the definitions of “abandoned land” and “nonproductive land,” respectively.

pursuant to R.C. 323.28(A), “all liens for taxes due at the time the deed of the property is transferred to the purchaser following the sale, and liens subordinate to liens for taxes, shall be deemed satisfied and discharged unless otherwise provided by the order of sale.” R.C. 323.28(B). *But see* R.C. 323.28(C) (describing circumstances in which the taxes are not “deemed satisfied and discharged pursuant to [R.C. 323.28(B)]”). If the property does not sell, it may be offered for sale again, not less than two weeks after the initial public auction.¹¹ *See generally* R.C. 323.28(D) (“[p]remises ... remaining unsold ... after being offered for sale on two separate occasions, not less than two weeks apart ... shall be forfeited ... pursuant to [R.C. Chapter 5722] or [R.C. 5723.01]”).

When the land is sold pursuant to R.C. 5721.19(A), the sale’s proceeds are distributed to the various lienholders and taxing authorities in accordance with R.C. 5721.19(D) through (G). *See* R.C. 5721.19(D) (explaining how proceeds from a sale are to be applied and distributed); R.C. 5721.19(E) (authorizing the court to enter a deficiency judgment against the record owner of the property in certain circumstances if the sales proceeds are not sufficient to pay all the delinquent amounts charged against it); R.C. 5721.19(F)(1)-(4) (providing, among other things, which liens and encumbrances are discharged upon a sale of the property). If the property does not sell, the land is offered for sale at a second public auction. R.C. 5721.19(C)(1). If the property remains unsold after the second public auction, the court or county board of revision may have the parcel offered for sale again for a minimum price fixed by the court or board. *See* R.C. 5721.19(C)(3).

Foreclosure under R.C. 323.65-.79

In addition to the foreclosure procedures codified in R.C. 323.25 and R.C. 5721.18, the Revised Code provides special procedures for the expedited foreclosure and disposition of abandoned land in R.C. 323.65-.79. *See generally* 2010 Op. Att’y Gen. No. 2010-010 (summarizing the ways in which abandoned property can be foreclosed under these statutes). Actions commenced under R.C. 323.65-.79 proceed before a county board of revision. R.C. 323.66(A) provides:

In lieu of utilizing the judicial foreclosure proceedings and other procedures and remedies available under [R.C. 323.25-.28] or under [R.C.

¹¹ There are two circumstances in which property will not be offered for sale a second time: (1) if an electing subdivision has requested title to nonproductive land in accordance with R.C. 5722.03 (“[i]f any nonproductive land selected by an electing subdivision is ... offered for sale at one sale ... but is not sold ... for want of a minimum bid ... the land is deemed sold to the electing subdivision”), or (2) if the land is considered “abandoned” under R.C. 323.65(A). *See* R.C. 323.28(D) (“[p]remises ..., after being offered for sale on one occasion in the case of abandoned land ... shall be forfeited ... pursuant to [R.C. Chapter 5722] or [R.C. 5723.01], and shall be disposed of pursuant to [R.C. Chapters 5722] or [5723]”).

Chapters 5721], [5722], or [5723], a county board of revision created under [R.C. 5715.01], upon the board's initiative, expressed by resolution, may foreclose the state's lien for real estate taxes upon abandoned land in the county.... The board shall order disposition of the abandoned land by public auction or by other conveyance in the manner prescribed by [R.C. 323.65-.79].

R.C. 323.69(A) authorizes the prosecuting attorney, a certificate holder,¹² or a CLRC to file a foreclosure complaint against abandoned property listed on the abandoned land list.¹³ The county board of revision hears and adjudicates a complaint filed under R.C. 323.69(A) in accordance with R.C. 323.70-.72. R.C. 323.70(A). If the board determines that the impositions¹⁴ against the land exceed its fair market value, the board may, “[u]pon entry of an order of foreclosure,” transfer the land, “without an appraisal or public auction,” to the certificate holder or CLRC that filed the complaint, “or to a community development organization, school district, municipal corporation, county, or township, whichever is applicable, as provided in [R.C. 323.74].” R.C. 323.71(A)(1); R.C. 323.73(G). Upon the land's transfer, all of the property's liens are deemed satisfied and discharged. R.C. 323.73(G).

If the county board of revision determines that the impositions against the abandoned land do not exceed its fair market value, the land may be foreclosed and offered for sale at public auction pursuant to R.C. 323.73.¹⁵ R.C. 323.71(A)(1). When property is sold under R.C.

¹² A certificate holder is “a person, including a [CLRC], that purchases or otherwise acquires a tax certificate under [R.C. 5721.32], [R.C. 5721.33], or [R.C. 5721.42], or a person to whom a tax certificate has been transferred pursuant to [R.C. 5721.36].” R.C. 5721.30(C); *see also* R.C. 323.65(H) (“[c]ertificate holder’ has the same meaning as in [R.C. 5721.30]”). A tax certificate is a certificate issued by the county treasurer in an effort to transfer the lien against certain delinquent land in lieu of foreclosure proceedings. *See* R.C. 5721.31(A)(1) (“the county treasurer may select from the [delinquent land] list parcels of delinquent land the lien against which the county treasurer may attempt to transfer by the sale of tax certificates under [R.C. 5721.30-.43]”); R.C. 5721.30(A) (defining “tax certificate”). The procedures for how the treasurer is to conduct those sales are set forth in R.C. 5721.30-.43.

¹³ The abandoned land list is compiled by the county treasurer, county auditor, a CLRC, or a certificate holder pursuant to R.C. 323.67(A). *See* R.C. 323.65(I) (“[a]bandoned land list’ means the list of abandoned lands compiled under [R.C. 323.67(A)]”).

¹⁴ R.C. 323.65(E) defines “[i]mpositions” as “delinquent taxes, assessments, penalties, interest, costs, reasonable attorney’s fees of a certificate holder, applicable and permissible costs of the prosecuting attorney of a county, and other permissible charges against abandoned land.”

¹⁵ If the county treasurer invokes the alternative redemption period in a petition for foreclosure filed by the prosecuting attorney under R.C. 323.69(A), the property shall be transferred to “a municipal corporation, township, county, school district, community

323.73, the purchaser acquires the owner's fee simple interest in the land, "free and clear of any liens and encumbrances of the parties named in the complaint for foreclosure attaching before the sale or transfer, and free and clear of any liens for taxes, except for federal tax liens and covenants and easements of record attaching before the sale." R.C. 323.73(D). If the abandoned land is sold for less than the impositions and costs charged against it, "all liens for taxes due at the time the deed of the property is conveyed to the purchaser following the sale ... and liens subordinate to liens for taxes, shall be deemed satisfied and discharged." R.C. 323.73(F).

When land is offered for sale pursuant to R.C. 323.73, but is not sold, and if an electing subdivision or CLRC requests title to the abandoned land within the time period specified in R.C. 323.77(B), the electing subdivision or CLRC will acquire the land as if it "appeared at the sale and submitted the winning bid at the auction." R.C. 323.77(B). Land sold to an electing subdivision or CLRC under R.C. 323.77(B) is sold "for no consideration other than the costs prescribed in [R.C. 323.75] or those costs to which the electing subdivision or [CLRC] and the county treasurer mutually agree." R.C. 323.77(B); *see also* R.C. 5722.03(F) (providing for the discharge of certain liens and encumbrances when property is transferred under R.C. 323.77).

If an electing subdivision or CLRC has not requested title to the land in accordance with R.C. 323.77, the county board of revision may order the land sold again pursuant to R.C. 323.74(B) or may transfer the land to a community development organization, school district, municipal corporation, county, or township that has requested title to the property and represented that it "will begin basic exterior improvements that will protect the land from further unreasonable deterioration." R.C. 323.74(C); *see also* R.C. 323.74(A). When an organization, district, or political subdivision makes such representations, the board orders the sheriff to transfer the land as follows:

The order by the board shall include instructions to the sheriff to transfer the land to the specified community development organization, school district, municipal corporation, county, or township after payment of the costs of disposing of the abandoned land pursuant to [R.C. 323.75] or, if any negotiated price has been agreed to between the county treasurer and the community development organization, school district, municipal corporation, county, or township, after payment of that negotiated price as certified by the board to the sheriff.

R.C. 323.74(D).

Whether sold at a second public auction or transferred to a community development organization, school district, municipal corporation, township, or county, the purchaser or transferee acquires the abandoned land free of "all liens for taxes due at the time the deed of the

development organization, or [CLRC] [that] has requested title to the parcel" in accordance with R.C. 323.78 instead of being sold pursuant to R.C. 323.73. R.C. 323.78.

property is conveyed ... or transferred ... and liens subordinate to liens for taxes.” R.C. 323.74(F). In the case of a transfer under R.C. 323.74(D), the county treasurer has the discretion to waive “some or all of the impositions” charged against the property “or costs apportioned to the land under [R.C. 323.75]” if the “treasurer reasonably determines that the transfer will result in the property being occupied.” R.C. 323.74(E).

Acquiring Nonproductive Land in Foreclosure under R.C. Chapter 5722

When a foreclosure action is filed against nonproductive land under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, an electing subdivision may choose to have the land’s foreclosure and disposition governed by the procedures set forth in R.C. 5722.02-.15. R.C. 5722.02(A). An electing subdivision triggers R.C. 5722.02-.15’s provisions by adopting an ordinance or resolution for the reutilization of nonproductive land in accordance with R.C. 5722.02(A). The ordinance or resolution shall state that “the existence of nonproductive land within [the] boundaries [of the municipal corporation, county, or township] is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.” 2014 Op. Att’y Gen. No. 2014-042, slip op. at 4 (alterations in original; quoting R.C. 5722.02(A)). The ordinance or resolution is delivered to the county auditor, county treasurer, and county prosecuting attorney. R.C. 5722.02(C); *see also* 2014 Op. Att’y Gen. No. 2014-042, slip op. at 4.

R.C. 5722.03(A) explains:

On and after the effective date of an ordinance or resolution adopted pursuant to [R.C. 5722.02], nonproductive land within an electing subdivision’s boundaries that the subdivision wishes to acquire and that has either been advertised and offered for sale or is otherwise available for acquisition pursuant to a foreclosure proceeding as provided in [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.18], but is not sold for want of a minimum bid, shall be sold or transferred to the electing subdivision in the manner set forth in [R.C. 5722.03] or [R.C. 323.65-79].¹⁶ (Footnote added.)

R.C. 5722.03(B) requires a prosecuting attorney to compile a list of all delinquent land against which a foreclosure action is pending and deliver the list to the electing subdivision. R.C.

¹⁶ R.C. 5722.03 does not preclude the application of R.C. 323.28(E) or R.C. 5721.19(I). In fact, R.C. 323.28(E) and R.C. 5721.19(I) make clear that property may be transferred under those sections “[n]otwithstanding [R.C. 5722.03].” R.C. 323.28(E); R.C. 5721.19(I). When property is transferred to an electing subdivision under R.C. 323.28(E) or R.C. 5721.19(I), none of R.C. 5722.03’s divisions—including division (F), which discharges the property’s liens—apply to the property’s transfer.

5722.03(C) authorizes the electing subdivision to select from the prosecuting attorney's list any nonproductive land it wishes to acquire, and to notify the prosecuting attorney of its selection prior to the property being offered for sale "or as otherwise provided in [R.C. 323.65-.79]." If the selected land is offered for sale but not sold, the electing subdivision is "deemed to have submitted the winning bid ... and the land is deemed sold to the electing subdivision for no consideration other than the amounts charged under [R.C. 5722.03(E) and (F)]." R.C. 5722.03(D); *see generally* R.C. 5722.03(E) (providing how costs of the foreclosure proceeding are allocated among the taxing districts); R.C. 5722.03(F) (requiring that an electing subdivision, other than a CLRC, pay the fee for transferring and recording the deed). When the electing subdivision acquires land pursuant to the procedures set forth in R.C. 5722.03, the electing subdivision takes title to the land "free and clear of all liens and encumbrances, except those easements and covenants of record running with the land and created prior to the time at which the taxes or assessments, for the nonpayment of which the land is sold or transferred at foreclosure, became due and payable." R.C. 5722.03(F).¹⁷

In addition to the procedure codified in R.C. 5722.03, R.C. Chapter 5722 provides two ways in which a political subdivision may acquire delinquent property outside of foreclosure proceedings, whether or not the property is nonproductive land.¹⁸ *See* R.C. 5722.10; R.C. 5722.21. The first such provision, R.C. 5722.10, permits an owner of delinquent land, upon the

¹⁷ Permitting an electing subdivision to acquire property in the manner set forth in R.C. 5722.03 is known as "land reutilization or land banking." Ohio Legislative Service Comm'n, Final Bill Analysis, Sub. S.B. 353 (2008). Although the electing subdivision does not pay for the property upon acquiring the land, the electing subdivision eventually sells the property and uses the proceeds from the sale to reimburse the taxing units for, among other things, any taxes that were "due and owing on such land as of the date of acquisition." R.C. 5722.08(C)(1) (governing the disposition of the proceeds received as a result of the property's sale by an electing subdivision); Ohio Legislative Service Comm'n, Final Bill Analysis, Sub. S.B. 353 (2008) ("[R.C. Chapter 5722] authorizes counties, townships, and municipal corporations ('electing subdivisions') to acquire real property that has been offered for sale at a tax sale without having to pay the sale price until the subdivision sells the property"); *see also* R.C. 5722.07 (setting forth the ways in which an electing subdivision can sell or otherwise dispose of property it acquires); R.C. 5722.13 (requiring property to be sold at public auction if an electing subdivision has not otherwise sold or disposed of it for fifteen years).

¹⁸ R.C. Chapter 5722 also provides a special procedure through which an electing subdivision may acquire property that has been forfeited to the state under R.C. Chapter 5723. *See* R.C. 5722.04. We will not discuss the procedure set forth in R.C. 5722.04, as it is not relevant to this opinion.

consent of the county auditor,¹⁹ to convey the land to an electing subdivision before a foreclosure action against the property reaches final judgment. R.C. 5722.10 provides, in part:

The owner shall present the electing subdivision with evidence satisfactory to the subdivision that it will obtain by such conveyance fee simple title to such delinquent land. Unless otherwise agreed to by the electing subdivision accepting the conveyance, the title shall be free and clear of all liens and encumbrances, except such easements and covenants of record running with the land as were created prior to the time of the conveyance and delinquent taxes, assessments, penalties, interest, and charges, and taxes and special assessments that are a lien on the real property at the time of the conveyance.

A conveyance under R.C. 5722.10 precludes the possibility or continuation of foreclosure or forfeiture. If a foreclosure or foreclosure and forfeiture proceeding is commenced against the property prior to a conveyance under the statute, “[t]he owners or the electing municipal corporation or township shall pay all expenses incurred by the county in connection with” the proceeding. R.C. 5722.10.²⁰ If the electing subdivision sells or transfers the land as authorized by R.C. 5722.07, “[t]he sale or ... transfer ... shall extinguish the lien on the title for all taxes, assessments, penalties, interest, and charges delinquent at the time of the conveyance of the delinquent land to the electing subdivision.” R.C. 5722.10.

R.C. Chapter 5722 also provides a way, separate from the procedures codified in R.C. 5722.02-.15, in which a municipality, county, township, or CLRC may acquire tax-delinquent property without becoming an electing subdivision. *See* R.C. 5722.21(B) (“[t]he authority granted by [R.C. 5722.21] is supplemental to the authority granted under [R.C. 5722.02-.15]”). R.C. 5722.21(B) authorizes the governing body of a municipality, county, township, or CLRC to declare by ordinance or resolution that it is in the public interest for the political subdivision or CLRC to acquire tax-delinquent property to redevelop it or otherwise render it suitable for tax-paying use. *See* Ohio Legislative Service Comm’n, Final Bill Analysis, Sub. H.B. 127 (2003) (recognizing that the act permits political subdivisions “to acquire tax-delinquent real estate before the foreclosure proceeding begins, without necessarily assuming the entire tax debt”). Upon making such a declaration, the political subdivision or CLRC “may purchase or otherwise acquire title to eligible delinquent land, other than by appropriation.” R.C. 5722.21(B). In practice, R.C. 5722.21 allows a property owner to voluntarily convey delinquent land to a political subdivision prior to the commencement of a foreclosure proceeding, on terms mutually agreed upon by both parties. *See* Ohio Legislative Service Comm’n, Final Bill Analysis, Sub.

¹⁹ “If an electing subdivision or [CLRC] certifies to the auditor in writing that the delinquent land is abandoned land ... the auditor shall consent to the conveyance.” R.C. 5722.10.

²⁰ “When the electing subdivision is the county or [CLRC] acting on behalf of a county, it may require the owner to pay the expenses.” R.C. 5722.10.

H.B. 127 (2003) (recognizing that a political subdivision may acquire eligible delinquent land in a voluntary transaction under R.C. 5722.21). Upon consent of the respective taxing authorities, a political subdivision acquires property under R.C. 5722.21 free of “[t]he lien for the delinquent taxes and associated costs.” R.C. 5722.21(D). When the property is transferred to a CLRC, the statute provides that “the lien for delinquent taxes and costs ... shall be extinguished simultaneously with the transfer of title to the [CLRC], notwithstanding that the taxing authorities have not consented to release their claims.” *Id.*

Forfeiture under R.C. Chapter 5723

When property is not disposed of in foreclosure, it is forfeited to the state or to a petitioning political subdivision, school district, or CLRC pursuant to R.C. 5723.01(A). *See* R.C. 5723.01(A)(1) (“land ... which, pursuant to foreclosure proceedings under [R.C. 323.25], [R.C. 323.65-.79], or [R.C. 5721.18], has been advertised and offered for sale on two separate occasions ... and not sold for want of bidders, shall be forfeited to the state or to a political subdivision, school district, or [CLRC] pursuant to [R.C. 5723.01(A)(3)]”). Forfeiture proceedings are initiated under R.C. Chapter 5723 when a county prosecuting attorney certifies to the court that land has been foreclosed under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, but has not been sold for want of bidders after being twice advertised and offered for sale at public auctions, held at least two weeks apart.²¹ R.C. 5723.01(A)(1)-(2). Upon receipt of this information, the court notifies the political subdivision, school district, and CLRC within whose borders the property is located and offers to forfeit the property to whichever political subdivision, school district, or CLRC petitions to acquire the delinquent land. R.C. 5723.01(A)(3). If such a petition is filed, the land is forfeited to the petitioning political subdivision, school district, or CLRC, and its disposal is considered final under R.C. Chapter 5723. *Id.* If a petition is not filed within ten days of the court’s notice, the court forfeits the property to the state in accordance with R.C. 5723.01(A)(2), to be disposed of under the provisions of R.C. Chapter 5723.²² *Id.*

A Political Subdivision Does Not Take Title to Forfeited Property under R.C. 5723.01(A)(3) Free and Clear of All Liens

We now consider whether a political subdivision that acquires forfeited property under R.C. 5723.01(A)(3) takes title to the property free and clear of all liens. When a copy of the court’s order forfeiting the property to a political subdivision is certified to the county auditor, R.C. 5723.01(A)(3) unambiguously states that “*all the right, title, claim, and interest of the*

²¹ In the case of abandoned land, the property is forfeited after being offered for sale on just one occasion. *See* R.C. 323.28(D).

²² “To the extent not otherwise provided in [R.C. 323.65-.79],” R.C. 323.69(C) authorizes a county board of revision to “apply the procedures prescribed by ... [R.C. Chapter 5723].”

former owner is transferred to and vested in the political subdivision.” R.C. 5723.01(A)(3) (emphasis added). *See generally State v. Coburn*, 121 Ohio St. 3d 310, 2009-Ohio-834, 903 N.E.2d 1204, at ¶8 (“[w]hen interpreting statutes, we must first examine the plain language and apply the statute as written when its meaning is clear and unambiguous”); *Family Med. Found., Inc. v. Bright*, 96 Ohio St. 3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, at ¶8 (recognizing that a court must adhere to the statute’s plain language in interpreting an unambiguous statute). Neither R.C. 5723.01(A)(3) nor any other applicable statute declares that a political subdivision takes title to the forfeited property free and clear of any liens. The absence of such language is particularly significant in light of the Revised Code’s other foreclosure and forfeiture statutes. When the General Assembly intends that certain liens be discharged when property is sold or transferred in foreclosure or forfeiture, it explicitly provides as much in the language of the relevant statute. *See, e.g.*, R.C. 323.74(F) (discharging liens attached to foreclosed property when land is disposed of in foreclosure by transfer to entities under R.C. 323.74); R.C. 323.73(G) (discharging liens in a transfer under that division when the delinquent amounts charged against abandoned land are greater than the land’s fair market value); R.C. 323.78(B) (stating that liens attached to property are discharged when transferred to certain entities under that section if the county treasurer invokes the alternative redemption period); R.C. 5722.21(B) (discharging liens upon consent of the taxing authorities when property is acquired by a political subdivision or CLRC by voluntary conveyance prior to foreclosure); R.C. 5723.12(B)-(C) (explaining which liens and encumbrances are discharged when property is sold or transferred after being forfeited to the state pursuant to R.C. Chapter 5723).

Additionally, when property is forfeited to the state, R.C. 5723.01(A)(2) provides that “all the right, title, claim, and interest of the former owner is transferred to and vested in the state to be disposed of in compliance with [R.C. Chapter 5723].”²³ In *Dubin v. Greenwood*, 139 Ohio St. 546, 549, 41 N.E.2d 240 (1942), the Ohio Supreme Court recognized that the state takes title to forfeited property under R.C. 5723.01(A)(2) subject to any existing liens. *See also* 1996 Op. Att’y Gen. No. 96-047, at 2-177 to 2-178 (relying on *Dubin* to conclude the same); 1991 Op.

²³ The state takes title to forfeited property under R.C. 5723.01(A)(2) for the sole purpose of disposing of it under R.C. Chapter 5723. *See* 1996 Op. Att’y Gen. No. 96-047, at 2-178 (recognizing that the state’s ownership under R.C. 5723.01(A)(2) “is limited to that which is necessary to dispose of the property to pay the amount of the unpaid taxes, assessments, penalties, interest, and costs of sale that stand charged against the property”). R.C. 5723.01(A)(3), on the other hand, contains no such limitation with respect to a political subdivision’s acquisition of forfeited property. A political subdivision that acquires property through forfeiture under R.C. 5723.01(A)(3) may dispose of, or otherwise manage the property, in any manner authorized by law. *See, e.g.*, R.C. 307.09(A) (permitting a board of county commissioners to sell or lease any of the county’s real property if the county’s interests so require); R.C. 505.10 (providing for the ways a board of township trustees may dispose of real property owned by the township); R.C. Chapter 721 (governing the sale or lease of property owned by municipal corporations).

Att’y Gen. No. 91-027, at 2-148 (“[u]pon forfeiture of lands for the nonpayment of taxes, the state acquires possession of the lands and the entire estate therein, with the power to dispose of the lands for the purpose of securing the amount of the unpaid taxes”). It is not until the state disposes of the property that the liens and encumbrances charged against it are deemed satisfied. *See* 1991 Op. Att’y Gen. No. 91-027, at 2-148 (acknowledging that the liens and encumbrances attached to the forfeited property are not discharged until sold under R.C. Chapter 5723). Accordingly, in response to your question, based on the unambiguous plain language of R.C. 5723.01(A)(3), we conclude that if the former owner’s right, title, claim, and interest in forfeited property includes any liens and encumbrances, a political subdivision that acquires ownership of the property under R.C. 5723.01(A)(3) does so subject to those existing liens.

Your inquiry has caused us to reconsider several conclusions in 2013 Op. Att’y Gen. No. 2013-001. In our 2013 opinion, we reasoned that the determination of whether liens are discharged when land is forfeited to a political subdivision under R.C. 5723.01(A)(3) is based upon the Revised Code’s foreclosure provisions, as foreclosure under R.C. Chapters 323 and 5721 and forfeiture under R.C. Chapter 5723 are parts of the same overall proceeding. 2013 Op. Att’y Gen. No. 2013-001, at 2-9. Specifically, we stated:

The provisions of law governing the payment of taxes and assessments that have accrued and are due as of the time the deed to real property is forfeited to a political subdivision pursuant to R.C. 5723.01 are set forth in the statutes that govern foreclosure proceedings under R.C. 323.25, R.C. 323.65-.79, and R.C. 5721.18, as the forfeiture is part of such proceedings.

Id.

Upon reconsideration of the Revised Code’s land foreclosure and forfeiture schemes, we now recognize that foreclosure pursuant to R.C. Chapters 323 and 5721 and forfeiture under R.C. Chapter 5723 are distinct processes that govern the disposition of delinquent property in different ways. When delinquent property is foreclosed under R.C. 323.25, R.C. 323.65-.79, or R.C. 5721.18, related provisions in R.C. Chapters 323, 5721, and, if applicable, 5722, govern the disposition of the foreclosed property through sale or other transfer. *See, e.g.*, R.C. 323.28 (providing how foreclosed property shall be sold at public auction or transferred, in certain cases, to political subdivisions and other entities); R.C. 5721.19 (same); R.C. 5722.03 (setting forth a way in which an electing subdivision may acquire nonproductive land in foreclosure). Property is subject to forfeiture under R.C. Chapter 5723 only when it is not sold or otherwise disposed of under the foreclosure provisions of the Revised Code. *See* R.C. 5723.01(A)(1) (“[e]very tract of land and town lot, which, pursuant to foreclosure proceedings ... has been advertised and offered for sale on two separate occasions, not less than two weeks apart, and not sold for want of bidders, shall be forfeited”); R.C. 323.28(D) (recognizing that foreclosed upon land not sold at public auction as provided for in R.C. 323.28(A) shall be forfeited under R.C. 5723.01 or R.C. Chapter 5722); R.C. 323.74(G) (providing that when abandoned property is not sold or otherwise transferred under R.C. 323.65-.79, the property “shall be forfeited or otherwise disposed of in the

same manner as lands under [R.C. 323.25] or [R.C. 5721.18] or [R.C. Chapter 5723]”); R.C. 5721.19(C)(2)(b) (acknowledging that a parcel subject to foreclosure under R.C. 5721.18 may, “at a subsequent time,” be sold at a forfeiture sale pursuant to R.C. Chapter 5723).

When property is subject to forfeiture under R.C. Chapter 5723, the forfeiture statutes in R.C. Chapter 5723 control the disposition of the property, and the foreclosure statutes codified in R.C. Chapters 323, 5721, and 5722 no longer apply. *See, e.g.*, R.C. 5723.01(A)(2) (property forfeited to the state shall be disposed of in accordance with R.C. Chapter 5723); R.C. 5722.04 (providing the way in which an electing subdivision may acquire property that has been forfeited to the state under R.C. 5723.01). *But see* R.C. 5721.14 (providing an option to combine foreclosure and forfeiture into one proceeding for delinquent vacant land). Therefore, the determination of whether liens are discharged when a political subdivision receives forfeited property under R.C. 5723.01(A)(3) is controlled by the terms of the pertinent provisions of R.C. Chapter 5723, not the foreclosure statutes codified in R.C. Chapters 323, 5721, or 5722.

Accordingly, we must depart from 2013 Op. Att’y Gen. No. 2013-001 insofar as several of its conclusions are based upon the premise that the foreclosure statutes in R.C. Chapters 323, 5721, or 5722 govern the status of a tax lien when property is forfeited to a political subdivision under R.C. 5723.01(A)(3). As a result, we overrule syllabus paragraphs three, four, and five of 2013 Op. Att’y Gen. No. 2013-001, and we clarify syllabus paragraph 6 of 2013 Op. Att’y Gen. No. 2013-001, to render it consistent with this opinion.

When Used in R.C. 5723.01(A)(3), the Term, “Political Subdivision,” Means a Municipal Corporation, a County, or a Township

Your third question asks about the meaning of the term, “political subdivision,” as used in R.C. 5723.01(A)(3). Specifically, you wish to know which entities are considered “political subdivisions” for purposes of the court’s notification under the statute. The relevant portion of R.C. 5723.01(A)(3) states:

After having been notified pursuant to division (A)(2) of this section that the tract of land or town lot has been twice offered for sale and not sold for want of bidders, the court shall notify the political subdivision and school district in which the property is located, and any [CLRC] in the county, and offer to forfeit the property to the political subdivision, school district, or [CLRC], or to an electing subdivision as defined in [R.C. 5722.01], upon a petition from the political subdivision, school district, or [CLRC].

“Political subdivision” is not defined for purposes of R.C. 5723.01(A)(3) or even more generally, for purposes of R.C. Chapter 5723 or R.C. Title 57. In the absence of a statutory definition, it is appropriate to accord this term its “common meaning.” 2004 Op. Att’y Gen. No. 2004-014, at 2-115 (“[w]here no statutory definition is provided, it is appropriate to use the common meaning of the term ‘political subdivision’”) (citing R.C. 1.42). The common meaning of “political subdivision” is “a limited geographical area of the State, within which a public

agency is authorized to exercise some governmental function.” *Id.* (quoting 1972 Op. Att’y Gen. No. 72-035, at 2-135); *accord* 2002 Op. Att’y Gen. No. 2002-038, at 2-244; *Black’s Law Dictionary* 1277 (9th ed. 2009) (defining “political subdivision” as “[a] division of a state that exists primarily to discharge some function of local government”). Depending upon the context within which the term is used, “political subdivision” has been read to include a wide variety of public entities. *See generally* 2004 Op. Att’y Gen. No. 2004-014, at 2-114 (recognizing that there is no one definition of the term, “political subdivision,” that is “applicable throughout the Revised Code”); 1992 Op. Att’y Gen. No. 92-061, at 2-254 (“[t]he term ‘political subdivision’ is used in various contexts throughout the Revised Code and is given various definitions. It is possible for an entity to be a political subdivision for one purpose and not for another”); 1991 Op. Att’y Gen. No. 91-072, at 2-340 (“[t]he term ‘political subdivision’ is ... susceptible of a wide variety of definitions, depending upon the context in which it is used” (quoting 1983 Op. Att’y Gen. No. 83-059, at 2-247)); 1983 Op. Att’y Gen. No. 83-059, at 2-247 (“[i]n its general sense, the term ‘political subdivision’ is used ‘to encompass all types of public agencies authorized to exercise governmental functions’” (quoting 1979 Op. Att’y Gen. No. 79-018, at 2-59)).

The term “political subdivision” in R.C. 5723.01 is, therefore, subject to varying meanings. *See Bright*, 2002-Ohio-4034, at ¶8 (“a statute is ambiguous when its language is subject to more than one reasonable interpretation”). When deciding among multiple meanings, it is entirely proper to consider how other provisions define or use the term in similar contexts. *See generally State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) (“[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law”); *Brenneman v. R.M.I. Co.*, 70 Ohio St. 3d 460, 464, 639 N.E.2d 425 (1994) (“[i]t is a general axiom of statutory construction that once words have acquired a settled meaning, that same meaning will be applied to a subsequent statute on a similar or analogous subject”) (citing R.C. 1.42), *amended on other grounds by* 71 Ohio St. 3d 1211, 643 N.E.2d 138 (1994). Therefore, to determine the meaning of “political subdivision” for purposes of R.C. 5723.01(A)(3), we consider how the term is used in R.C. Chapter 323.

R.C. Chapter 323’s use of “political subdivision” is persuasive in determining what the legislature intends “political subdivision” to mean in the context of foreclosure and forfeiture procedures. Several of R.C. Chapter 323’s provisions reference R.C. Chapter 5723, indicating that, although they are separate, foreclosure processes under R.C. Chapter 323 and forfeiture processes under R.C. Chapter 5723 are interrelated in a way that makes R.C. Chapter 323’s use of the term “political subdivision” instructive. *See, e.g.*, R.C. 323.28(D) (“[p]remises ... remaining unsold for want of bidders after being offered for sale on two separate occasions, not less than two weeks apart, or after being offered for sale on one occasion in the case of abandoned land ... shall be forfeited to the state or to a political subdivision, school district, or [CLRC] pursuant to [R.C. Chapter 5722] or [R.C. 5723.01], and shall be disposed of pursuant to [R.C. Chapters 5722] or [5723]”); R.C. 323.66(A) (“[i]n lieu of utilizing the judicial foreclosure proceedings and other procedures and remedies available under [R.C. 323.25-.28] or under [R.C. Chapters 5721], [5722], or [5723], a county board of revision ... may foreclose the state’s lien

for real estate taxes upon abandoned land in the county”); R.C. 323.69(C) (“[t]o the extent not otherwise provided in [R.C. 323.65-.79], the board may apply the procedures prescribed by [R.C. 323.25-.28] or [R.C. Chapters 5721], [5722], and [5723]”); R.C. 323.74(G) (“[a]ny parcel that has been advertised and offered for sale pursuant to foreclosure proceedings and has not sold for want of bidders or been otherwise transferred under [R.C. 323.65-.79] shall be forfeited or otherwise disposed of in the same manner as lands under [R.C. 323.25] or [R.C. 5721.18] or [R.C. Chapter 5723]”).

The use of “political subdivision” in R.C. 323.74(C) is particularly helpful. As discussed above, R.C. 323.74(C) relates to the disposition of abandoned property in foreclosure. The statute states, in part:

[A] community development organization or any school district, municipal corporation, county, or township in which the land is located may request that title to the land be transferred to [it] at the time described in this division. ... The request shall include a representation that the organization, district, or political subdivision ... will begin basic exterior improvements that will protect the land from further unreasonable deterioration.

R.C. 323.74(C) (emphasis added). The statute identifies five entities that may request title to abandoned property under the circumstances described therein: a community development organization, a school district, a municipal corporation, a county, and a township. When referenced later in the statute, the entities are grouped into one of the following three categories: an organization, a district, or a political subdivision. To be sure, “organization” refers to the community development organization, and “district,” similarly, is in reference to the school district. The term, “political subdivision,” therefore, encompasses the three remaining entities: the municipal corporation, county, and township.

Therefore, we conclude that the term, “political subdivision,” as used in R.C. 5723.01(A)(3), means a municipal corporation, a county, or a township. Under R.C. 5723.01(A)(3), a court that has been notified that property has remained unsold for want of bidders as required under R.C. 5723.01(A)(2), shall notify the county, municipal corporation, township, school district, and CLRC in which the land is located of the property’s pending forfeiture.

The Distribution of Excess Proceeds under R.C. 5723.11

We now address your first question, which asks about a county treasurer’s disposition of excess proceeds following a forfeiture sale under R.C. Chapter 5723 in a county that does not have a CLRC. R.C. 5723.11 states, in pertinent part:

If any forfeited lands are sold for a greater sum than the amount of the tax, assessment, penalty, interest, and costs of sale, the county auditor shall charge the county treasurer separately in each case, in the name of the supposed owner, with

the excess above such amount. The treasurer shall retain such excess in the treasury for the proper owner of the forfeited lands, and upon demand by such owner, within one year from the day of sale, shall pay the excess to the owner. After that one year, *the treasurer shall dispose of any excess according to law* or, if a [CLRC] exists in the county, shall pay the amount to the [CLRC]. (Emphasis added.)

R.C. 5723.11 requires the county treasurer to pay excess proceeds from a forfeiture sale to an organized CLRC if the proceeds are not claimed by the proper owner²⁴ within one year from the day of sale. In a county without a CLRC, the statute's direction is less specific, requiring the county treasurer instead to dispose of the unclaimed excess "according to law." R.C. 5723.11. The phrase "according to law" means "that which the law provides." *See generally Jameson v. Glenny*, 20 Ohio Dec. 353, 355 (C.P. Warren County 1910) (determining the meaning of "according to law" as used in a testator's will). In other words, when a particular statute instructs a public official to act "according to law," the public official must look outside that statute and consider all other applicable laws in ascertaining the scope of her powers. *See generally Dawson v. State*, 38 Ohio St. 1, 3 (1882) (explaining that when an officer is required to act "according to law," the officer shall look to all the statutory "law in force during the term of office"). Therefore, we must look beyond R.C. 5723.11 in determining how a county treasurer is to dispose of unclaimed excess proceeds in a county without a CLRC.

A county treasurer is a creature of statute, entitled to exercise only those powers expressly granted by the legislature or "such implied powers as are necessary to carry into effect the powers expressly delegated." *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935) ("[t]he county auditor and county treasurer of a county are creatures of statute"). The bulk of a county treasurer's duties and powers are codified in R.C. Chapter 321, which authorizes a county treasurer, among other things, to hold public moneys in the county treasury; pay out or transfer these moneys on the county auditor's warrant; and keep an accurate account of the moneys held in, and paid out of, the county treasury. *See* R.C. 321.05; R.C. 321.07; R.C. 321.12; R.C. 321.15; *see also* 2002 Op. Att'y Gen. No. 2002-005, at 2-24 (citing R.C. 321.05 in stating that a county public official must deposit public money with the county treasurer under R.C. 9.38). The treasurer must also comply with the Uniform Depository Act, which authorizes the treasurer, as the fiduciary of public moneys, to invest moneys held in the county treasury in accordance with the Act's requirements. *See* R.C. 135.31-40.

A treasurer may not pay money from the county treasury unless the payment is specifically authorized by statute. *See* 1972 Op. Att'y Gen. No. 72-122, at 2-465 ("[i]t is well

²⁴ Under R.C. 5723.11, the "proper owner" is the former owner of the property before its forfeiture to the state under R.C. Chapter 5723. *See Taylor v. Monroe*, 92 Ohio App. 499, 502-03, 109 N.E.2d 673 (Cuyahoga County 1951) (acknowledging that it is the "delinquent land owner" that can claim the excess under G.C. 5757, predecessor to R.C. 5723.11).

settled that neither the county auditor nor the county treasurer may direct or permit a payment from the public treasury unless such payment is authorized by statute”). The Revised Code contains numerous provisions that designate which funds are to be credited or which entities are to be paid when county officials collect fees and other revenues. *See, e.g.*, R.C. 5705.09-.10 (providing that revenue derived from certain tax levies shall be deposited in the county treasury to the credit of various specified funds); R.C. 4585.33 (directing unclaimed excess from sale of watercraft or outboard motors to be deposited in the county general fund); *see also* 2011 Op. Att’y Gen. No. 2011-017, at 2-158 to 2-159 (acknowledging the general principle that when fees collected under R.C. 2935.36 are deposited into the county treasury, they must be paid into a fund, and citing R.C. 5705.09, R.C. 5707.091, R.C. 5705.10, R.C. 5705.12, and R.C. 5705.131).

R.C. 9.39 governs the handling and disposition of all public money not otherwise disbursed under the authority of another statute. If public money remains unclaimed by its lawful owner after a period of five years, R.C. 9.39 directs that the money return to the relevant public office’s general fund. The statute provides, in full:

All public officials are liable for all public money received or collected by them or by their subordinates under color of office. All money received or collected by a public official under color of office and not otherwise paid out according to law shall be paid into the treasury of the public office with which he is connected to the credit of a trust fund and shall be retained there until claimed by its lawful owner. If not claimed within a period of five years, the money shall revert to the general fund of the public office.

R.C. 9.39.

If applicable to unclaimed excess proceeds from a forfeiture sale under R.C. Chapter 5723, R.C. 9.39 requires the county treasurer to deposit the unclaimed excess into the county treasury “to the credit of a trust fund” and to retain the excess in trust “until claimed by its lawful owner.” If unclaimed after five years, “the money shall revert to the” county general fund.²⁵

To determine whether R.C. 9.39 applies to unclaimed excess proceeds received in a R.C. Chapter 5723 forfeiture sale, we must decide whether the unclaimed excess qualifies as “money received or collected by a public official under color of office and not otherwise paid out according to law,” as understood by R.C. 9.39. This is a two-part inquiry: (1) whether the

²⁵ The county auditor collects the proceeds at issue under R.C. 5723.11 and charges the county treasurer “with the excess.” The county treasurer retains the excess in the county treasury for the proper owner of the forfeited lands. Thus, “the general fund of the public office,” as described in R.C. 9.39, would, in this case, constitute the county general fund.

moneys constitute “money received or collected by a public official under color of office,”²⁶ and (2) whether the excess satisfies R.C. 9.39’s requirement that the money is “not otherwise paid out according to law.”

Excess Proceeds Collected in a Forfeiture Sale Constitute Money Received or Collected by a Public Official under Color of Office for Purposes of R.C. 9.39

Excess proceeds collected as a result of a forfeiture sale under R.C. Chapter 5723 undoubtedly constitute “money received or collected by a public official under color of office.” “As used in ... [R.C. 9.39]: (1) ‘Color of office,’ ‘public office,’ and ‘public official’ have the same meanings as in [R.C. 117.01].” R.C. 9.38; *see also* 1989 Op. Att’y Gen. No. 89-002, at 2-11 (quoting R.C. 9.38). R.C. 117.01(E) defines “[p]ublic official” as “any officer, employee, or duly authorized representative or agent of a public office.” Under R.C. 117.01(D), “[p]ublic office’ means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” The offices of county auditor and county treasurer are incontestably “public offices.” Established by the laws of Ohio, the offices exist to perform specific governmental functions for a county, which is a political subdivision of the state. *See* R.C. Chapter 319 (powers and duties of the county auditor); R.C. Chapter 321 (powers and duties of the county treasurer); 1989 Op. Att’y Gen. No. 89-002, at 2-11 (referring to the county treasurer’s office as a public office). In turn, there is no question that the county auditor and county treasurer meet the definition of “public official.” Both officials are the elected heads of their respective offices, or “duly authorized representative[s]” of those offices as contemplated by R.C. 117.01(E). *See* R.C. 319.01 (“[a] county auditor shall be chosen quadrennially in each county, who shall hold his office for four years, commencing on the second Monday in March next after his election”); R.C. 321.01 (“[a] county treasurer shall be elected quadrennially in each county, who shall hold his office for four years from the first Monday of September next after his election”); *Rocca v. Wilke*, 53 Ohio App. 2d 8, 17, 371 N.E.2d 223 (Hamilton County 1977) (referring to county auditors and treasurers as “public officials”); Ohio Ethics Comm’n, Advisory Op. No. 85-007, slip op. at 1 (concluding that a county treasurer is a “public official” for purposes of R.C. 2921.01(A) “because he is an elected officer of a political subdivision of the state”).

The county auditor and county treasurer, as public officials, “receive[] or collect[]” excess proceeds from a forfeiture sale “under color of office.” R.C. 9.39. R.C. 117.01(A) explains that “[c]olor of office’ means actually, purportedly, or allegedly done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.” R.C.

²⁶ Under R.C. 117.01(C), “money received, collected by, or due a public official under color of office” is “[p]ublic money.” *See also* 1989 Op. Att’y Gen. No. 89-002, at 2-11 (“[w]hen R.C. 9.38, R.C. 9.39 and R.C. 117.01 are read and construed together, it is apparent that ‘public moneys’ includes moneys received by a public official under color of office”).

Chapter 5723 authorizes a county auditor to hold public auctions for the sale of forfeited property and to charge the county treasurer with the proceeds from the auction. R.C. 5723.04; R.C. 5723.06; R.C. 5723.11. In turn, R.C. 5723.11 explicitly requires a county treasurer to “retain such excess in the treasury for the proper owner of the forfeited lands.” Therefore, in conducting forfeiture sales and collecting and retaining the proceeds therefrom, the county auditor and county treasurer perform their duties under “color of office,” as defined in R.C. 117.01(A).

Excess Proceeds are “Not Otherwise Paid out According to Law”

Having concluded that the excess proceeds are “money received or collected by a public official under color of office,” we now consider whether the excess proceeds are money “not otherwise paid out according to law.” R.C. 9.39. R.C. 5723.11 requires a county treasurer to retain the excess proceeds within the treasury for one year. If claimed by the proper owner within that year, the money is paid to the owner. If not claimed by the owner, and there is a CLRC in the county, the money is paid to the CLRC. R.C. 5723.11 does not explicitly direct the disposition of money unclaimed by the owner after one year when there is no CLRC. Therefore, proceeds that are not paid to the owner or a CLRC constitute money that is “not otherwise paid out according to law.” For purposes of R.C. 9.39, it therefore follows that unclaimed excess proceeds from a forfeiture sale under R.C. Chapter 5723 are “money received or collected by a public official under color of office and not otherwise paid out according to law.”²⁷

Accordingly, in response to your inquiry, we conclude that if excess proceeds collected in a forfeiture sale under R.C. Chapter 5723 in a county without a CLRC remain unclaimed after a year from the day of the forfeiture sale, R.C. 5723.11’s “according to law” language requires the county treasurer, pursuant to R.C. 9.39, to retain the excess for the lawful owner for an additional five years. If the excess remains unclaimed after this five-year period, the county treasurer shall deposit the excess into the county general fund.²⁸

²⁷ The Unclaimed Funds Act, which is devoted to the handling and disposition of unclaimed funds, does not apply to “[m]oney received or collected under section 9.39 of the Revised Code.” R.C. 169.01(B)(2)(a). Thus, it does not apply to unclaimed excess proceeds of a forfeiture sale under R.C. Chapter 5723 collected by the county auditor and retained by the county treasurer.

²⁸ We recognize that applying R.C. 9.39 to unclaimed excess proceeds from a forfeiture sale gives an owner a total of six years to claim excess funds in counties without a CLRC, but only one year in counties with CLRCs. While it is not clear why the General Assembly intends such a result, we are nevertheless constrained to apply the plain language of R.C. 9.39 and R.C. 5723.11 as enacted by the General Assembly. If the General Assembly does not intend for R.C. 9.39 and R.C. 5723.11 to operate in this manner, it may amend the language of the relevant statutes to more clearly reflect its intent. *See, e.g.*, R.C. 5721.20 (providing that excess proceeds remaining

Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. A political subdivision that acquires forfeited property pursuant to R.C. 5723.01(A)(3) takes “all the right, title, claim, and interest of the former owner,” and if the former owner’s title to the property includes any liens and encumbrances, the political subdivision takes title to the property subject to those liens and encumbrances. (2013 Op. Att’y Gen. No. 2013-001, syllabus, paragraphs 3, 4, and 5, overruled, and syllabus, paragraph 6, clarified).
2. The term, “political subdivision,” as used in R.C. 5723.01(A)(3), means a municipal corporation, a county, or a township.
3. A county treasurer’s obligations under R.C. 5723.11 to dispose of excess proceeds from a sale of forfeited property “according to law,” require the treasurer, pursuant to R.C. 9.39, to retain the excess proceeds in the county treasury for the lawful owner for an additional five years. If the excess proceeds remain unclaimed after this five-year period, the treasurer shall deposit the excess proceeds into the county general fund.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

after a foreclosure sale shall be retained in the treasury for three years, after which “the excess shall be forfeited to the delinquent tax and assessment collection fund created under [R.C. 323.261], or in counties that have established a [CLRC] fund under [R.C. 323.263], to the [CLRC] fund”).